

House File 2048 - Introduced

HOUSE FILE 2048

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A BILL FOR

1 An Act relating to state and local government activities by
2 modifying provisions relating to eminent domain authority
3 and procedures, making appropriations for purposes relating
4 to passenger rail, and including effective date and
5 retroactive and other applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

EMINENT DOMAIN

Section 1. NEW SECTION. **6A.15 Property on state historic registry.**

1. Property listed on the state register of historic places maintained by the historical division of the department of cultural affairs shall not be removed from the register solely for the purpose of allowing acquisition of the property by condemnation, unless such condemnation is undertaken by the department of transportation.

2. Property listed on the state register of historic places maintained by the historical division of the department of cultural affairs shall not be condemned by the state or a political subdivision unless a joint resolution authorizing commencement of the condemnation proceedings is approved by a vote of at least two-thirds of the members of both chambers of the general assembly and signed by the governor. The approval requirements of this subsection shall not apply to condemnation undertaken by the department of transportation.

Sec. 2. Section 6A.19, Code 2014, is amended to read as follows:

6A.19 Interpretative clause.

A grant in this chapter of right to take private property for a public use shall not be construed as limiting a like grant elsewhere in the Code for another and different use. Unless specifically provided by law, this chapter shall not be construed to limit or otherwise affect the application of chapters 478 and 479 to the eminent domain authority of the utilities division of the department of commerce.

Sec. 3. Section 6A.22, subsection 2, paragraph c, subparagraph (1), Code 2014, is amended to read as follows:

(1) (a) If private property is to be condemned for development or creation of a lake, only that number of acres justified as reasonable and necessary for a surface drinking water source, and not otherwise acquired, may be condemned.

1 In addition, the acquiring agency shall conduct a review of
2 prudent and feasible alternatives to provision of a drinking
3 water source prior to making a determination that such
4 lake development or creation is reasonable and necessary.
5 Development or creation of a lake as a surface drinking water
6 source includes all of the following:

- 7 (i) Construction of the dam, including sites for suitable
8 borrow material and the auxiliary spillway.
- 9 (ii) The water supply pool.
- 10 (iii) The sediment pool.
- 11 (iv) The flood control pool.
- 12 (v) The floodwater retarding pool.
- 13 (vi) The surrounding area upstream of the dam no higher in
14 elevation than the top of the dam's elevation.
- 15 (vii) The appropriate setback distance required by state or
16 federal laws and regulations to protect drinking water supply.
- 17 (b) For purposes of this subparagraph (1), *"number of acres*
18 *justified as reasonable and necessary for a surface drinking*
19 *water source"* means according to guidelines of the United
20 States natural resource conservation service and according to
21 analyses of ~~surface~~ drinking water capacity needs conducted by
22 one or more registered professional engineers. The registered
23 professional engineers may, if appropriate, employ standards
24 or guidelines other than the guidelines of the United States
25 natural resource conservation service when determining the
26 number of acres justified as reasonable and necessary for
27 a surface drinking water source. The data and information
28 used by the registered professional engineers shall include
29 data and information relating to population and commercial
30 enterprise activity for the area from the two most recent
31 federal decennial censuses unless the district court of the
32 county in which the property is situated has determined by
33 a preponderance of the evidence that such data would not
34 accurately predict the population and commercial enterprise
35 activity of the area in the future.

1 (c) A second review or analysis of the drinking water
2 capacity needs shall be performed upon receipt by the acquiring
3 agency of a petition signed by not less than twenty-five
4 percent of the affected property owners. The registered
5 professional engineer to perform the second review or analysis
6 shall be selected by a committee appointed by the affected
7 property owners and whose membership is comprised of at
8 least fifty percent property owners affected by the proposed
9 condemnation action. The acquiring agency shall be responsible
10 for paying the fees and expenses of such an engineer.

11 (d) If private property is to be condemned for development
12 or creation of a lake, the plans, analyses, applications,
13 including any application for funding, and other planning
14 activities of the acquiring agency shall not include or provide
15 for the use of the lake for recreational purposes.

16 Sec. 4. Section 6B.54, subsection 10, paragraph a, Code
17 2014, is amended by adding the following new subparagraph:

18 NEW SUBPARAGRAPH. (3) Reasonable attorney fees and
19 reasonable costs not to exceed one hundred thousand dollars,
20 attributable to a determination that the creation of a lake
21 through condemnation includes a future recreational use or that
22 a violation of section 6A.22, subsection 2, paragraph "c",
23 subparagraph (1), subparagraph division (d), has occurred, if
24 such fees and costs are not otherwise provided under section
25 6B.33.

26 Sec. 5. NEW SECTION. **6B.56B Disposition of condemned**
27 **property — two-year time period.**

28 1. When two years have elapsed since property was condemned
29 for the creation of a lake according to the requirements of
30 section 6A.22, subsection 2, paragraph "c", subparagraph (1),
31 and the property has not been used for or construction has
32 not progressed substantially from the date the property was
33 condemned for the purpose stated in the application filed
34 pursuant to section 6B.3, and the acquiring agency has not
35 taken action to dispose of the property pursuant to section

1 6B.56, the acquiring agency shall, within sixty days, adopt a
2 resolution offering the property for sale to the prior owner
3 at a price as provided in section 6B.56. If the resolution
4 adopted approves an offer of sale to the prior owner, the offer
5 shall be made in writing and mailed by certified mail to the
6 prior owner. The prior owner has one hundred eighty days after
7 the offer is mailed to purchase the property from the acquiring
8 agency.

9 2. If the acquiring agency has not adopted a resolution
10 described in subsection 1 within the sixty-day time period, the
11 prior owner may, in writing, petition the acquiring agency to
12 offer the property for sale to the prior owner at a price as
13 provided in section 6B.56. Within sixty days after receipt of
14 such a petition, the acquiring agency shall adopt a resolution
15 described in subsection 1. If the acquiring agency does not
16 adopt such a resolution within sixty days after receipt of the
17 petition, the acquiring agency is deemed to have offered the
18 property for sale to the prior owner.

19 3. The acquiring agency shall give written notice to the
20 owner of the right to purchase the property under this section
21 at the time damages are paid to the owner.

22 Sec. 6. Section 403.7, subsection 1, unnumbered paragraph
23 1, Code 2014, is amended to read as follows:

24 A municipality shall have the right to acquire by
25 condemnation any interest in real property, including a fee
26 simple title thereto, which it may deem necessary for or in
27 connection with an urban renewal project under this chapter,
28 subject to the limitations on eminent domain authority
29 in ~~chapter~~ chapters 6A and 6B. However, a municipality
30 shall not condemn agricultural land included within an
31 economic development area for any use unless the owner of
32 the agricultural land consents to condemnation or unless the
33 municipality determines that the land is necessary or useful
34 for any of the following:

35 Sec. 7. NEW SECTION. 423B.11 Use of revenues — limitation.

1 The revenue raised by a local sales and services tax imposed
2 under this chapter by a county shall not be expended for any
3 purpose related to a project that includes the condemnation of
4 private property for the creation of a lake according to the
5 requirements of section 6A.22, subsection 2, paragraph "c",
6 subparagraph (1), if the local sales and services tax has not
7 been approved at election in the area where the property to be
8 condemned is located.

9 Sec. 8. Section 455A.5, Code 2014, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 7. The authority granted to the commission
12 to acquire real property for purposes of carrying out a
13 duty related to development or maintenance of the recreation
14 resources of the state, including planning, acquisition, and
15 development of recreational projects, and areas and facilities
16 related to such projects, shall not include the authority to
17 acquire real property by eminent domain.

18 Sec. 9. Section 456A.24, subsection 2, unnumbered paragraph
19 1, Code 2014, is amended to read as follows:

20 Acquire by purchase, ~~condemnation~~, lease, agreement,
21 gift, and devise lands or waters suitable for the purposes
22 hereinafter enumerated, and rights-of-way thereto, and to
23 maintain the same for the following purposes, ~~to wit~~:

24 Sec. 10. Section 456A.24, Code 2014, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 15. The authority granted the department
27 to acquire real property for any statutory purpose relating to
28 the development or maintenance of the recreation resources of
29 the state, including planning, acquisition, and development
30 of recreational projects, and areas and facilities related to
31 such projects, shall not include the authority to acquire real
32 property by eminent domain.

33 Sec. 11. Section 461A.7, Code 2014, is amended to read as
34 follows:

35 **461A.7 ~~Eminent domain~~ Purchase of lands — public parks.**

1 The commission may purchase ~~or condemn~~ lands from willing
2 sellers for public parks. ~~No~~ A contract for the purchase of
3 such public parks shall not be made to an amount in excess of
4 funds appropriated therefor by the general assembly.

5 Sec. 12. Section 461A.10, Code 2014, is amended to read as
6 follows:

7 **461A.10 Title to lands.**

8 The title to all lands purchased, ~~condemned~~, or donated,
9 hereunder, for park ~~or highway~~ purposes and the title to all
10 lands purchased, condemned, or donated hereunder for highway
11 purposes, shall be taken in the name of the state and if
12 thereafter it shall be deemed advisable to sell any portion of
13 the land so purchased or condemned, the proceeds of such sale
14 shall be placed to the credit of the ~~said~~ public state parks
15 fund to be used for such park purposes.

16 Sec. 13. Section 463C.8, subsection 1, paragraph k, Code
17 2014, is amended to read as follows:

18 k. The power to acquire, own, hold, administer, and dispose
19 of property, except that such power is not a grant of authority
20 to acquire property by eminent domain.

21 Sec. 14. REPEAL. Sections 461A.9 and 461A.75, Code 2014,
22 are repealed.

23 Sec. 15. SEVERABILITY. If any provision of this division of
24 this Act is held invalid, the invalidity shall not affect other
25 provisions or applications of this division of this Act which
26 can be given effect without the invalid provision, and to this
27 end the provisions of this division of this Act are severable
28 as provided in section 4.12.

29 Sec. 16. EFFECTIVE UPON ENACTMENT. This division of this
30 Act, being deemed of immediate importance, takes effect upon
31 enactment.

32 Sec. 17. APPLICABILITY. Except as otherwise provided in
33 this division of this Act, this division of this Act applies to
34 projects or condemnation proceedings pending or commenced on or
35 after the effective date of this division of this Act.

1 Sec. 18. RETROACTIVE APPLICABILITY. Notwithstanding any
2 provision of law to the contrary, the following provision or
3 provisions of this division of this Act apply retroactively to
4 projects or condemnation proceedings pending or commenced on or
5 after February 15, 2013:

6 1. The section of this division of this Act amending section
7 6A.22.

8 2. The section of this division of this Act enacting section
9 6B.56B.

10 DIVISION II

11 PASSENGER RAIL APPROPRIATION

12 Sec. 19. DEPARTMENT OF TRANSPORTATION — PASSENGER
13 RAIL. There is appropriated from the rebuild Iowa
14 infrastructure fund to the department of transportation for the
15 fiscal year beginning July 1, 2014, and ending June 30, 2015,
16 the following amount, or so much thereof as is necessary, for
17 the purposes designated:

18 For deposit into the passenger rail service revolving
19 fund created in section 327J.2 for matching federal funding
20 available through the federal Passenger Rail Investment
21 and Improvement Act of 2008 for passenger rail service,
22 notwithstanding section 8.57, subsection 5, paragraph "c":
23 \$ 5,500,000

24 Sec. 20. REVERSION. For purposes of section 8.33, unless
25 specifically provided otherwise, unencumbered or unobligated
26 moneys made from an appropriation in this division of this Act
27 shall not revert but shall remain available for expenditure for
28 the purposes designated until the close of the fiscal year that
29 ends three years after the end of the fiscal year for which the
30 appropriation was made. However, if the project or projects
31 for which such appropriation was made are completed in an
32 earlier fiscal year, unencumbered or unobligated moneys shall
33 revert at the close of that same fiscal year.

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 This bill makes changes relating to eminent domain authority
3 and procedures and makes appropriations for certain passenger
4 rail activities.

5 Division I of the bill provides that property listed on the
6 state register of historic places shall not be removed from
7 the register solely for the purpose of allowing the property
8 to be acquired by condemnation unless the condemnation is
9 undertaken by the department of transportation. The bill also
10 provides that property on the state register of historic places
11 may not be condemned unless a joint resolution authorizing
12 the condemnation is approved by a vote of at least two-thirds
13 of each house of the general assembly and signed by the
14 governor. This approval procedure, however, does not apply to
15 a condemnation undertaken by the department of transportation.

16 Division I of the bill specifies that Code chapter 6A, unless
17 specifically provided by law, is not to be construed to limit
18 or otherwise affect the application of Code chapters 478 and
19 479 to the eminent domain authority of the utilities division
20 of the department of commerce.

21 Division I of the bill makes changes relating to eminent
22 domain authority in relation to development or creation of
23 a lake. The bill provides that when determining the number
24 of acres justified as reasonable and necessary for a surface
25 drinking water source, the registered professional engineers
26 may, if appropriate, employ standards or guidelines other
27 than the guidelines of the United States natural resource
28 conservation service. The bill requires the data and
29 information used by the registered professional engineers
30 to include data and information relating to population and
31 commercial enterprise activity for the area from the two most
32 recent federal decennial censuses unless the district court of
33 the county in which the property is situated has determined
34 by a preponderance of the evidence that such data would not
35 accurately predict the population and commercial enterprise

1 activity of the area in the future.

2 Division I of the bill also provides that a second review
3 or analysis of the drinking water capacity needs shall be
4 performed upon receipt by the acquiring agency of a petition
5 signed by not less than 25 percent of the affected property
6 owners. The registered professional engineer to perform the
7 second review or analysis shall be selected by a committee
8 appointed by the affected property owners and comprised of
9 at least 50 percent property owners affected by the proposed
10 condemnation action. The division further provides that
11 the acquiring agency shall pay for the services of such an
12 engineer.

13 Division I of the bill provides that if private property
14 is to be condemned for development or creation of a lake,
15 the plans, analyses, applications, including any application
16 for funding, and other planning activities of the acquiring
17 agency shall not include or provide for the use of the lake for
18 recreational purposes.

19 Division I of the bill adds reasonable attorney fees and
20 reasonable costs that are attributable to certain condemnation
21 proceedings relating to the creation of a lake, up to \$100,000,
22 to the list of expenses reimbursable by an acquiring agency to
23 a property owner.

24 Division I of the bill provides that when two years have
25 elapsed since property was condemned for the creation of a
26 lake and the property has not been used for or construction
27 has not progressed substantially for the purpose stated in the
28 application, and the acquiring agency has not taken action to
29 dispose of the property pursuant to Code section 6B.56, the
30 acquiring agency shall, within 60 days, adopt a resolution
31 offering the property for sale to the prior owner at a price
32 as provided in Code section 6B.56. If the acquiring agency
33 has not adopted a resolution within the 60-day time period,
34 the prior owner may petition the acquiring agency to offer the
35 property for sale to the prior owner at a price as provided in

1 Code section 6B.56. The bill requires the acquiring agency to
2 give written notice to the owner at the time damages are paid
3 to the owner of the right to purchase the property under such
4 circumstances.

5 Division I of the bill also amends urban renewal law
6 relating to the circumstances in which a municipality may
7 condemn agricultural land within an economic development urban
8 renewal area to provide that condemnation may occur if viable
9 alternatives do not exist and the acquisition of the land is
10 necessary for the purposes stated in current law.

11 Division I of the bill provides that the revenue raised by a
12 local sales and services tax imposed under Code chapter 423B
13 by a county shall not be expended for any purpose related to a
14 project that includes the condemnation of private property for
15 the creation of a lake if the local sales and services tax has
16 not been approved at election in the area where the property to
17 be condemned is located.

18 Division I of the bill provides that the department of
19 natural resources and the natural resource commission shall
20 not exercise eminent domain authority to acquire real property
21 for purposes of carrying out a duty related to development or
22 maintenance of the recreation resources of the state, including
23 planning, acquisition, and development of recreational
24 projects, and areas and facilities related to such projects.
25 The bill retains the department's authority to acquire property
26 through condemnation for highway purposes.

27 Except as otherwise provided in division II of the bill,
28 division II takes effect upon enactment and applies to projects
29 or condemnation proceedings pending or commenced on or after
30 that date.

31 Division I of the bill provides that the provisions of
32 division I amending Code section 6A.22 and enacting Code
33 section 6B.56B apply retroactively to projects or condemnation
34 proceedings pending or commenced on or after February 15, 2013.

35 Division II of the bill appropriates from the rebuild Iowa

1 infrastructure fund to the department of transportation for
2 the fiscal year beginning July 1, 2014, \$5,500,000 for deposit
3 into the passenger rail service revolving fund created in Code
4 section 327J.2 for matching federal funding available through
5 the federal Passenger Rail Investment and Improvement Act of
6 2008 for passenger rail service. The bill also provides that
7 for purposes of Code section 8.33, unless specifically provided
8 otherwise, unencumbered or unobligated moneys made from an
9 appropriation in division II shall not revert but shall remain
10 available for expenditure for the purposes designated until the
11 close of the fiscal year that ends three years after the end of
12 the fiscal year for which the appropriation was made. However,
13 if the project or projects for which such appropriation was
14 made are completed in an earlier fiscal year, unencumbered
15 or unobligated moneys shall revert at the close of that same
16 fiscal year.